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**S. R. F. PERERA**  
**vs**  
**URBAN COUNCIL, WATTALA**

COURT OF APPEAL,  
SRISKANDARAJAH, J.  
C. A. NO. 18/2003  
SEPTEMBER, 17th, 2004

*Writ of mandamus on Urban Council - Urban Councils Ordinance, No. 61 of 1939, sections 104 and 105 - Repair and maintain drains of the area - Statutory duty ?- Can writ lie.?*

**Held :**

(i). The petitioner admits that the respondent Council had spent large sums of money to repair and to enlarge the network of the drainage system but they complain that it is not effective. The position of the respondent is that within their capabilities and with available funds they have done their best. Under these circumstances writ would not lie.

It would be improper for the court to make an order of mandamus compelling it to do that which it cannot do or which it can only do at the expense of other persons not before court who may have equal rights with the applicant and some of whom would certainly have equal moral claims.

**APPLICATION** for a writ of mandamus

**Case referred to :**

*Regina vs Bristol Confrontation Exparte Handy* (CA) (1974) 1 WLR 498  
at 501 and 503

*Sharuka Amarasinghe* for petitioner

*Aravinda R. I. Athurupana* with *P. Kehelwatte* for 1st to 3rd respondents

*Cur. adv. vult*

November 15, 2004

**SRISKANDARAJAH, J.**

The petitioners are residing in the Urban Council area of Wattala. The 1st respondent, the Urban Council of Wattala is a statutory body under the

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Urban Councils Ordinance vested with the statutory duty of maintaining the drainage facilities of the area of Wattala. The 2nd and 3rd respondents are respectively the Chairman and the Secretary of the said Urban Council.

The petitioners submit that until 1986 rainwater and all other drainage systems of the Wattala area were directed *via* the waterways of the area to the Kelani River. In 1986 notwithstanding the objections of the residents of the area the Wattala Urban Council took steps to construct a drainage system without proper planning or foresight. The Urban Council in doing so closed all the waterways of the area and attempted to replace the system that existed. The newly constructed drainage system could not perform the functions of the earlier drainage system and as it could not withstand the water pressure created by the inflow of water from the by - drains connected to it considerable damage was caused to these drains leading to regular flooding of the area. The petitioners further submitted that no repair work was done in regard to the said damaged drainage system until 2001. Thereafter a vast amount of money was spent for the repair of drains but the repaired drains have worsened the situation of the drainage system and have caused more problems for the residents of the area.

The petitioners state that due to the deplorable state of the drains the petitioners and other residents of the area are facing several health hazards. They have complained to the respondents and other relevant authorities including Her Excellency the President of Sri Lanka to take steps in relation to this matter. The petitioner further submitted that the Department of Local Government has also recommended to the Urban Council by their letter of 14th October 2002 as to what steps should be taken to repair the drains to reduce the health hazard faced by the petitioners (p 18). The petitioners also submitted that the respondent Council has failed to take any steps on the recommendations and the advice given by the Department of Local Government or other Government Institutions. Therefore they are compelled to invoke the intervention of this Court. The petitioner further submitted that in terms of the provisions contained in Sections 104 and 105 of the Urban Councils Ordinance 61 of 1939 (as amended) the Urban Council of Wattala has a statutory duty to maintain, repair and for the up keeping of the drains of the area for the effectual draining of the area and the Urban Council

has failed to effectively maintain the said drains of the area. Therefore the petitioners prayed for a writ of mandamus compelling the 1st to the 3rd respondents to effectively repair and maintain the drains of the area as suggested by the Commissioner of Local Government.

The position of the respondents is that due to the development of that area it has become necessary to have more drains. Therefore the respondents have laid new drains and have improved the drainage system of that area within their power and with the available funds. The position of the respondents is that they are performing their duty to the best of their ability and the drainage systems cannot be improved and if it has to be improved any further that is beyond their financial capabilities. Under these circumstances the respondents submit that they should not be compelled to do an act which is beyond their capabilities.

*In Regina V Bristol Corporation, Ex parte Hendy*<sup>11</sup> at 501 & 503, Lord Denning M. R. observed;

"I think that the local authority fulfil their duty when they do their best, as soon as practicable, to get him other accommodation. I think the local authority have made a very proper offer. There is no case for a mandamus."

Stamp L. J.;

"I agree. It is not; I hope and believe every failure on the part of a local authority to carry out its duties that may be corrected by an order of mandamus. If it were so, the courts would, as I see it, be taking over the whole control of the Government of this country".

Scarman L. J.;

"I am satisfied that mandamus ought not to issue. In my judgment, if, in a situation such as this, there is evidence that a local authority is doing all that is honestly and honourably can to meet the statutory obligation, and that its failure, if there be failure, to meet that obligation arises really out of circumstances over which it has no control, then I would think it would be improper for the court to make an order of mandamus compelling it to do that which either it cannot do or which it can only do at the expense of other persons not before court who

may have equal rights with the applicant and some of whom would certainly have equal moral claims. For those reasons I would think that in its discretion the court ought not to make an order of mandamus.”

In this instant application the petitioners admit that the respondent Council had spent large sums of money to repair and to enlarge the network of drainage system but they complain that it is not effective. The position of the respondent is that within their capabilities and with the available funds they have done their best. Under these circumstances the court is not inclined to issue a writ of mandamus. The court dismisses this application without cost.

*Application dismissed.*

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